

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 FRANK MENDOZA GONZALES,) NO. EDCV 11-1028-JAK (MAN)
12)
13 Plaintiff,) MEMORANDUM AND ORDER DISMISSING
14 v.) COMPLAINT WITH LEAVE TO AMEND
15)
16 SAN BERNARDINO COUNTY)
17 SHERIFF'S DEPT., et al,)
18 Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

19 On July 11, 2011, plaintiff, a state prisoner proceeding *pro se*,
20 filed a civil rights complaint pursuant to 42 U.S.C. § 1983
21 ("Complaint").
22

23 Congress has mandated that courts perform an initial screening of
24 civil rights actions brought by prisoners with respect to prison
25 conditions and/or that seek redress from a governmental entity or
26 officer or employee of a governmental entity. The Court "shall" dismiss
27 such an action if the Court concludes that the complaint is frivolous,
28 malicious, fails to state a claim upon which relief may be granted, or

1 seeks relief against a defendant who is immune from suit. 28 U.S.C. §
2 1915A(b); 42 U.S.C. § 1997e(c)(1). In screening such a complaint, the
3 Court must construe the allegations of the complaint liberally and must
4 afford the plaintiff the benefit of any doubt. See Karim-Panahi v. Los
5 Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). A *pro se*
6 litigant must be given leave to amend his or her complaint unless it is
7 absolutely clear that the deficiencies of the complaint cannot be cured
8 by amendment. *Id.*; Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir.
9 1987).

11 ALLEGATIONS OF THE COMPLAINT

13 Plaintiff is currently detained at the West Valley Detention Center
14 ("WVDC") in San Bernardino County. (Complaint at 2.) He sues the
15 following defendants: San Bernardino County Sheriff's Department
16 ("Sheriff's Department"); San Bernardino County Sheriff Rod Hoops,
17 solely in his official capacity; Deputy Sheriff Carrillo, in his
18 individual and official capacities; and Deputy Sheriffs John Doe Nos.
19 1 through 3, solely in their official capacities. (*Id.* at 3-4.)

21 Plaintiff asserts an Eighth Amendment claim for violation of his
22 right to personal safety and pendent state claims for negligence and
23 "mental anguish." (Complaint at 5.) He alleges that Sheriff Hoops
24 mandates that deputy sheriffs follow a policy and practice pursuant to
25 which inmates requesting protective custody are first sent to the "high
26 power unit" in order "to get hurt first, to substantiate their claim,
27 before putting them in protective custody." (*Id.*) Plaintiff alleges
28 that defendant Carrillo, a "classification deputy," applied this policy

1 to plaintiff and refused his requests to be placed in protective
2 custody. (*Id.* at 5 & Ex. G.)

3
4 Plaintiff further contends that, while he was housed in the "high
5 power" unit, his ethnicity was improperly changed several times on his
6 WVDC records. (Complaint at 5.) He contends that, as a Hispanic
7 inmate, he should only be housed with Hispanic inmates, and defendant
8 Carrillo acted maliciously and sadistically by assigning him an African-
9 American cellmate. (*Id.* at 5a.) Plaintiff's African-American cellmate
10 assaulted him, causing plaintiff to defend himself, and plaintiff's
11 thumb was broken and required surgery. (*Id.*) When plaintiff returned
12 from the hospital, defendant Carrillo changed his ethnicity from
13 African-American back to Hispanic and assigned him a Hispanic cellmate.¹
14 (*Id.*) Plaintiff was afraid for his safety and denied the Hispanic
15 inmate entry to his cell. (*Id.*) According to the grievances attached
16 as exhibits to plaintiff's Complaint, he is a Mexican Mafia associate
17 "drop out" and is afraid of retaliation from Hispanic gang members.
18 (*Id.*, Exs. D, E.)

19
20 Plaintiff was eventually placed in protective custody, where he
21 remains. (Complaint at 5a.) He seeks an injunction preventing
22 defendants from returning him to the general population and preventing
23 "excessive cell searches" in retaliation for this lawsuit. (*Id.* at 6.)

24
25 ¹ Plaintiff's allegation that his ethnicity was changed "back
26 to Hispanic" implies that at some point it was changed from Hispanic to
27 African-American. It is not clear from the Complaint, however, whether
28 plaintiff has a factual basis for asserting that his ethnicity was
changed on the WVDC records, or whether he is merely drawing an
inference from his cellmate assignments.

1 He also seeks damages. (*Id.*)

3 DISCUSSION

5 I. PLAINTIFF FAILS TO STATE AN EIGHTH AMENDMENT CLAIM AGAINST 6 DEFENDANT CARRILLO.

8 Plaintiff asserts claims against defendant Carrillo, in his
9 individual and official capacities, for violation of plaintiff's Eighth
10 Amendment right to personal safety. (Complaint at 5.) As an initial
11 matter, the Cruel and Unusual Punishment Clause of the Eighth Amendment
12 applies only to convicted prisoners. Ingraham v. Wright, 430 U.S. 651,
13 671 n.40, 97 S. Ct. 1401, 1412 n.40 (1977). The Due Process Clause of
14 the Fourteenth Amendment governs conditions of confinement claims
15 brought by pre-trial detainees. Bell v. Wolfish, 441 U.S. 520, 535
16 n.16, 99 S. Ct. 1861, 1872 n.16 (1979); Redman v. County of San Diego,
17 942 F.2d 1435, 1440-41 (9th Cir. 1991). Thus, if plaintiff is held at
18 WVDC as a pretrial detainee, his claims arise under the Due Process
19 Clause. Plaintiff should specify his status in his amended complaint.

21 Prison officials have a duty to take reasonable steps to guarantee
22 inmates' safety and protect them from assault by other inmates. See
23 Farmer v. Brennan, 511 U.S. 825, 832-33, 114 S. Ct. 1970, 1976 (1994).
24 Although a pretrial detainee's interest in personal security arises
25 under the Fourteenth Amendment, the deliberate indifference standard of
26 the Eighth Amendment provides the level of culpability necessary for
27 liability. Redman, 942 F.2d at 1443. Plaintiff must show that
28 defendant acted with deliberate indifference to a substantial risk of

1 serious harm. Farmer, 511 U.S. at 828, 114 S. Ct. at 1974. Deliberate
2 indifference exists when the official knows of and disregards an
3 excessive risk to the inmate's safety. *Id.* at 837, 114 S. Ct. at 1979.
4 The official must be aware of facts from which the inference could be
5 drawn that a substantial risk of serious harm exists and must actually
6 draw the inference. *Id.* While a prisoner need not wait to be injured
7 before seeking injunctive relief, see Farmer, 511 U.S. at 845, 114 S.
8 Ct. at 1983, a prisoner seeking damages must allege that the risk
9 materialized and caused him injury, see Babcock v. White, 102 F.3d 267,
10 270-73 (7th Cir. 1996)(explaining that "it is the reasonably preventable
11 assault itself, rather than any fear of assault, that gives rise to a
12 compensable claim"). See also Resnick v. Hayes, 213 F.3d 443, 449 (9th
13 Cir. 2000)("In a constitutional tort, as in any other, a plaintiff must
14 allege that the defendant's actions caused him some injury.").

15
16 Here, plaintiff's claims arise out of defendant Carrillo's refusal
17 to place him in protective custody. Plaintiff does not allege in the
18 Complaint why he required protective custody, but according to his
19 attached exhibits, he feared attack by Hispanic gang members because he
20 used to be a Mexican Mafia associate and "dropped out." (Complaint,
21 Exs. D-H.) Plaintiff complains that Deputy Sheriff Carrillo assigned
22 him an Hispanic cellmate. Plaintiff, however, does not allege that he
23 was injured by an Hispanic cellmate; in fact, plaintiff refused to allow
24 that Hispanic prisoner into the cell. (Complaint at 5a.) Thus, even
25 assuming, *arguendo*, that defendant Carrillo acted with deliberate
26 indifference when he assigned plaintiff an Hispanic cellmate, plaintiff
27 cannot recover damages, because he did not suffer any injury from that
28 event.

1 Plaintiff alleges that he was injured by his African-American
2 cellmate. However, there are no allegations that there was any
3 connection between this assault and plaintiff's need for protective
4 custody. (Complaint at 5a.) Indeed, plaintiff does not even allege why
5 his cellmate assaulted him. (*Id.*) Plaintiff contends that it is the
6 "custom and habit" for Hispanic inmates to be housed only with other
7 Hispanic inmates; however, the Supreme Court has held that a policy of
8 housing prisoners "only with other inmates of the same race" is subject
9 to strict scrutiny. See Johnson v. California, 543 U.S. 499, 507-10,
10 125 S. Ct. 1141, 1147-49 (2005). Thus, plaintiff has not alleged facts
11 showing that defendant Carrillo was culpable merely because he assigned
12 plaintiff an African-American cellmate. There are no facts alleged
13 showing or tending to show that defendant Carrillo knew of and
14 disregarded an excessive risk to plaintiff's safety. Farmer, 511 U.S.
15 at 837, 114 S. Ct. at 1979.

16
17 Finally, plaintiff alleges that he is currently housed in
18 protective custody. (Complaint at 5a.) Although he seeks an injunctive
19 order preventing defendants from returning him to the general population
20 (Complaint at 6), the Complaint contains no allegations showing that
21 defendants are likely to do so. Thus, plaintiff's allegations regarding
22 his need for injunctive relief are purely speculative.

23
24 Accordingly, for all of these reasons, plaintiff has not alleged
25 a claim against defendant Carrillo for violation of plaintiff's
26
27
28

1 constitutional right to personal safety.²

2
3 **II. PLAINTIFF FAILS TO STATE A CLAIM AGAINST THE SHERIFF'S DEPARTMENT**
4 **OR DEFENDANTS IN THEIR OFFICIAL CAPACITIES.**
5

6 Plaintiff has named the Sheriff's Department as a defendant.
7 (Complaint at 1.) To allege a Section 1983 claim against an individual
8 defendant, a plaintiff need only allege a constitutional deprivation
9 inflicted on him by that defendant. To allege a Section 1983 claim
10 against a local governmental entity such as the Sheriff's Department,
11 however, more is needed. Plaintiff must allege a constitutional
12 deprivation *and* a policy, custom, or practice of Sheriff's Department
13 that was the "moving force" of the constitutional deprivation. Monell
14 v. Department of Social Services, 436 U.S. 658, 694-95, 98 S. Ct. 2018,
15 2037-38 (1978); Villegas v. Gilroy Garlic Festival Ass'n, 541 F.3d 950,
16 957 (9th Cir. 2008); Galen v. County of Los Angeles, 477 F.3d 652, 667
17 (9th Cir. 2007).
18

19 A local governmental entity such as the Sheriff's Department "may
20 not be sued under § 1983 for an injury inflicted solely by its employees
21 or agents. Instead, it is when execution of a government's policy or
22 custom, whether made by its lawmakers or by those whose edicts or acts
23 may fairly be said to represent official policy, inflicts the injury
24 that the government as an entity is responsible under § 1983." Monell,
25

26 ² Plaintiff also alleges that defendant Carrillo x-rayed him
27 and that Carrillo is not qualified to operate an x-ray machine.
28 (Complaint at 4.) Plaintiff does not assert a constitutional claim
based on this allegation, nor would it support a constitutional claim.

1 436 U.S. at 694, 98 S. Ct. at 2037-38. Thus, a local governmental
2 entity is not liable for the acts of its employees unless "the action
3 that is alleged to be unconstitutional implements or executes a policy
4 statement, ordinance, regulation, or decision officially adopted or
5 promulgated by that body's officers" or unless the alleged
6 constitutional deprivation was "visited pursuant to a governmental
7 'custom' even though such a custom has not received formal approval
8 through the body's official decisionmaking channels." *Id.* at 690-91,
9 98 S. Ct. at 2035-36.

10
11 Here, plaintiff alleges that the Sheriff's Department has a policy
12 or practice of waiting until an inmate is injured before acceding to his
13 request to be placed in protective custody, so as to substantiate the
14 need for protective custody. (Complaint at 5.) However, the "first
15 inquiry in any case alleging municipal liability under § 1983 is the
16 question whether there is a direct causal link between a municipal
17 policy or custom and the alleged constitutional deprivation." City of
18 Canton, Ohio v. Harris, 489 U.S. 378, 386, 109 S. Ct. 1197, 1203 (1989).
19 Plaintiff contends that he required protective custody, because he was
20 in danger from Hispanic gang members. Plaintiff was not injured by a
21 Hispanic gang member. Although plaintiff was injured by his African-
22 American cellmate, he does not allege a connection between that assault
23 and his need for protective custody. Thus, plaintiff has not alleged
24 a causal connection between the purported policy and his injuries. See
25 Villegas, 541 F.3d at 957.

26
27 Plaintiff asserts official capacity claims against Sheriff Hoops,
28 John Doe Nos. 1 through 3, and Deputy Sheriff Carrillo. Because an

1 official capacity claim is merely another way of pleading a claim
2 against the governmental entity of which the official is an agent, see
3 Monell 436 U.S. at 690 n.55, 98 S. Ct. at 2035 n.55, plaintiff's
4 official capacity claims are, in effect, claims against the Sheriff's
5 Department. The Court has already explained why plaintiff's claims
6 against the Sheriff's Department are defective.

7
8 Accordingly, plaintiff's claims against the Sheriff's Department
9 and his official capacity claims against defendants Hoops, Carrillo, and
10 John Doe Nos. 1 through 3 must be dismissed.

11
12 **III. SHERIFF HOOPS AND JOHN DOE NOS. ONE THROUGH THREE ARE REDUNDANT**
13 **DEFENDANTS.**

14
15 Plaintiff has sued Sheriff Hoops and John Does Nos. 1 through 3
16 solely in their official capacities. (Complaint at 1, 3.) As explained
17 above, a suit against a defendant in his official capacity is equivalent
18 to a suit against the entity that employs him or her. Center for Bio-
19 Ethical Reform, Inc. v. Los Angeles County Sheriff Dept., 533 F.3d 780,
20 798 (9th Cir. 2008). "When both a municipal officer and a local
21 government entity are named, and the officer is named only in an
22 official capacity, the court may dismiss the officer as a redundant
23 defendant." *Id.* Sheriff Hoops and John Doe Nos. 1 through 3 are
24 redundant defendants, and plaintiff's claims against them must be
25 dismissed for this additional reason.

26 ///

27 ///

28 ///

1 **IV. PLAINTIFF'S STATE LAW CLAIMS ARE SUBJECT TO DISMISSAL FOR FAILURE**
2 **TO COMPLY WITH THE CALIFORNIA GOVERNMENT CLAIMS ACT.**
3

4 Plaintiff asserts pendent state claims for negligence and "mental
5 anguish." (Complaint at 5.)
6

7 Under the California Government Claims Act (also known as the Tort
8 Claims Act), a plaintiff seeking to recover money damages from a public
9 entity or its employees must submit a claim to the entity before filing
10 suit in court, generally no later than six months after the cause of
11 action accrues. California Government Code §§ 900.4, 905, 910, 911.2,
12 915. Timely claim presentation is not merely a procedural requirement
13 but is an element of the plaintiff's cause of action. Shirk v. Vista
14 Unified School District, 42 Cal. 4th 201, 209, 64 Cal. Rptr. 3d 210, 216
15 (2007). A plaintiff may sue the public entity and its employees in
16 court only after the entity has acted upon or is deemed to have rejected
17 the claim. *Id.*; see Mangold v. California Public Utilities Commission,
18 67 F.3d 1470, 1477 (9th Cir. 1995) ("The California Tort Claims Act
19 requires, as a condition precedent to suit against a public entity, the
20 timely presentation of a written claim and the rejection of the claim
21 in whole or in part.").
22

23 Thus, when a plaintiff asserts a claim subject to the Government
24 Claims Act, he must affirmatively allege compliance with the claim
25 presentation procedure, or circumstances excusing such compliance, in
26 his complaint. Shirk, 42 Cal. 4th at 209, 64 Cal. Rptr. 3d at 216;
27 State of California v. Superior Court (Bodde), 32 Cal. 4th 1234, 1243,
28 13 Cal. Rptr. 3d 534, 541 (2004)(plaintiff must allege facts

1 "demonstrating or excusing compliance with the claim presentation
2 requirement"). "Compliance with the claims statutes is mandatory and
3 failure to file a claim is fatal to the cause of action." City of San
4 Jose v. Superior Court, 12 Cal. 3d 447, 454, 115 Cal. Rptr. 797, 802
5 (1974)(*internal citation omitted*). The requirement that a plaintiff
6 asserting claims subject to the Government Claims Act must affirmatively
7 allege compliance with the claims filing requirements applies in federal
8 court. Karim-Panahi, 839 F.2d at 627.

9
10 Plaintiff has not alleged that he submitted a timely claim to the
11 County of San Bernardino. Plaintiff, in fact, requested from this Court
12 permission to present a late claim.³ Plaintiff's failure to comply with
13 the claims filing procedures of the California Government Claims Act
14 mandates dismissal of his state law claims.

15 16 CONCLUSION

17
18 For the foregoing reasons, the Complaint is dismissed with leave
19 to amend. If plaintiff wishes to pursue this action, he is granted
20 thirty (30) days from the date of this Memorandum and Order within which
21 to file a First Amended Complaint that attempts to cure the defects in
22 the Complaint described herein. The First Amended Complaint, if any,
23 shall be complete in itself. It shall not refer in any manner to the
24 original Complaint.

25 _____
26 ³ On July 15, 2011, the Court denied plaintiff's request. See
27 Ovando v. City of Los Angeles, 92 F. Supp. 2d 1011, 1022 (C.D. Cal.
28 2000)(question presented by application for leave to file untimely claim
under the California Government Claims Act is not within federal court's
subject matter jurisdiction).

1 Plaintiff is explicitly cautioned that failure to timely file a
2 First Amended Complaint, or failure to correct the deficiencies
3 described herein, may result in a recommendation that this action be
4 dismissed pursuant to Fed. R. Civ. P. 41(b).

5
6 DATED: July 26, 2011

7 
8 MARGARET A. NAGLE
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28